

SERVICE DATE - SEPTEMBER 21, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (sub-No. 3X)¹

NEW YORK CENTRAL LINES, LLC–ABANDONMENT
EXEMPTION–IN BERKSHIRE COUNTY, MA

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: September 20, 2001

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively applicants) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinues of Service for NYC to abandon and CSXT to discontinue service over approximately 1.91 miles of railroad between milepost QBH-0.59 and milepost QBY-2.50 in Pittsfield, Berkshire County, MA. Notice of the exemption was served and published in the Federal Register on August 13, 2001 (66 FR 42582-83). The notice stated that the exemption will be effective on September 12, 2001, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1) was filed by August 23, 2001. On August 27, 2001, Housatonic Railroad Company (Housatonic) late-filed a formal expression of intent to file an OFA in order to purchase the entire line and requested that the Board waive its regulations at 49 CFR 1152.27(c)(2) and accept its late-filed notice of intent. By decision served September 7, 2001, the proceeding was reopened, Housatonic's late-filed notice of intent was accepted, the exemption was made subject to several environmental conditions,² and the due date for Housatonic to file its OFA was established as September 12, 2001. As a result of the acceptance of Housatonic's notice of intent, the effective date of the exemption was automatically stayed until September 22, 2001.

On September 6, 2001, Housatonic filed a petition to toll the period for submitting an OFA for 30 days (until October 12, 2001) stating that CSXT had not provided it with the

¹ This decision embraces STB Docket No. AB-55 (Sub-No. 595X), CSX Transportation, Inc.–Discontinuance of Service Exemption–in Berkshire County, MA.

² The environmental conditions required that NYC: (1) consult with the National Geodetic Survey at least 90 days prior to disturbing or destroying any geodetic markers in order to plan for their relocation; and (2) consult with the Pittsfield Conservation Commission prior to salvage operations regarding protection of wetland resources.

financial data prescribed in 49 CFR 1152.27(a). By decision served September 11, 2001, the time period for Housatonic to file its OFA was extended until October 12, 2001, and the effective date was further postponed until October 22, 2001.

On September 17, 2001, Housatonic filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$27,750.³ Housatonic states that it has not received the information requested from CSXT, and has been informed that the information is unlikely to be available before October 12, 2001. Therefore, Housatonic states that it is submitting its OFA based upon information available to it. Housatonic also states that it “reserves the right to revise its offer of financial assistance if it deems a revision to be appropriate upon receipt of the requested information from CSXT.”

Review of Housatonic’s OFA at this time would be premature because Housatonic states that it has not received the requested information from CSXT and it asserts a right to revise its offer after receiving that information. Under the circumstances, Housatonic’s OFA will be reviewed after the October 12, 2001 due date for filing OFAs.⁴ If the requested CSXT information has not been received in time for Housatonic to use the information to revise its offer by October 12, 2001, the Board stands ready to grant a further 30-day extension of the OFA due date so that the needed information can be obtained, assessed, and used in revising the OFA.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Housatonic’s OFA will not be reviewed at this time, as discussed in this decision.
2. CSXT is directed to provide Housatonic with the requested information.
3. If CSXT is unable to provide Housatonic with the required information in a timely manner, the parties may request an additional 30-day extension of the OFA filing deadline.
4. This decision is effective on its service date.

³ Concurrently with its OFA, Housatonic filed a motion for protective order, requesting that confidential information (its balance sheet) be kept under seal. By decision of the Secretary of the Board, served concurrently with this decision, that motion has been granted.

⁴ If Housatonic files nothing further on its OFA by October 12, or states that it will stand on its offer as made, the OFA filed on September 17, 2001, will be reviewed at that time. If Housatonic revises its offer by October 12, based on information received from CSXT, the revised offer will be reviewed.

STB Docket No. AB-565 (Sub-No. 3X) et al.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary